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**BEFORE THE  
RESPIRATORY CARE BOARD  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-371

LEONARD DOMINGUEZ  
3621 Goldbar Drive  
Bakersfield, California 93312

**STATEMENT OF ISSUES**

Respondent.

Complainant alleges:

**PARTIES**

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, (Board) Department of Consumer Affairs.

2. On or about June 20, 2005, the Board received an application for a Respiratory Care Practitioner License from Leonard Dominguez (Respondent). On or about June 16, 2005, respondent certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on May 2, 2006.

**JURISDICTION**

3. This Statement of Issues is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

1                   4.       Section 3710 of the Code states: “The Respiratory Care Board of California,  
2 hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the  
3 Respiratory Care Practice Act].”

4                   5.       Section 3718 of the Code states: “The board shall issue, deny, suspend, and  
5 revoke licenses to practice respiratory care as provided in this chapter.”

6                   6.       Section 3732, subdivision (b) of the Code states:

7                   "The board may deny an application, or may order the issuance of a license  
8 with terms and conditions, for any of the causes specified in this chapter for  
9 suspension or revocation of a license, including, but not limited to, those causes  
10 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

11                  7.       Section 3750 of the Code states:

12                  "The board may order the denial, suspension or revocation of, or the  
13 imposition of probationary conditions upon, a license issued under this chapter, for  
14 any of the following causes:

15                  " . . .

16                  “(d) Conviction of a crime that substantially relates to the qualifications,  
17 functions, or duties of a respiratory care practitioner. The record of conviction or a  
18 certified copy thereof shall be conclusive evidence of the conviction. . . .”

19                  8.       Section 3750.5 of the Code states:

20                  "In addition to any other grounds specified in this chapter, the board may  
21 deny, suspend, or revoke the license of any applicant or license holder who has done  
22 any of the following:

23                  " . . .

24                  "(c) Applied for employment or worked in any health care profession or  
25 environment while under the influence of alcohol.

26                  " . . .

27                  "(e) Been committed or confined by a court of competent jurisdiction for  
28 intemperate use of or addiction to the use of any of the substances described in

1 subdivisions (a), (b), and (c) in which event the court order of commitment or  
2 confinement is prima facie evidence of that commitment or confinement. . . .”

3 9. Section 3752 of the Code states:

4 “A plea or verdict of guilty or a conviction following a plea of nolo  
5 contendere made to a charge of any offense which substantially relates to the  
6 qualifications, functions, or duties of a respiratory care practitioner is deemed to be  
7 a conviction within the meaning of this article. The board shall order the license  
8 suspended or revoked, or may decline to issue a license, when the time for appeal  
9 has elapsed, or the judgment of conviction has been affirmed on appeal or when an  
10 order granting probation is made suspending the imposition of sentence, irrespective  
11 of a subsequent order under Section 1203.4 of the Penal Code allowing the person  
12 to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
13 the verdict of guilty, or dismissing the accusation, information, or indictment.”

14 10. California Code of Regulations, Title 16, section 1399.370, states:

15 “For the purposes of denial, suspension, or revocation of a license, a crime  
16 or act shall be considered to be substantially related to the qualifications, functions  
17 or duties of a respiratory care practitioner, if it evidences present or potential  
18 unfitness of a licensee to perform the functions authorized by his or her license or in  
19 a manner inconsistent with the public health, safety, or welfare. Such crimes or acts  
20 shall include but not be limited to those involving the following:

21 “. . .

22 “(c) Conviction of a crime involving driving under the influence or reckless  
23 driving while under the influence. . . .”

#### 24 COST RECOVERY

25 11. Section 3753.5, subdivision (a) of the Code states:

26 “In any order issued in resolution of a disciplinary proceeding before the  
27 board, the board or the administrative law judge may direct any practitioner or  
28 applicant found to have committed a violation or violations of law to pay to the

1 board a sum not to exceed the costs of the investigation and prosecution of the  
2 case."

3 12. Section 3753.7 of the Code states:

4 "For purposes of the Respiratory Care Practice Act, costs of prosecution  
5 shall include attorney general or other prosecuting attorney fees, expert witness fees,  
6 and other administrative, filing, and service fees."

7 13. Section 3753.1, subdivision (a) of the Code states:

8 "An administrative disciplinary decision imposing terms of probation may  
9 include, among other things, a requirement that the licensee-probationer pay the  
10 monetary costs associated with monitoring the probation."

11 FIRST CAUSE FOR DENIAL OF APPLICATION

12 (Conviction of a Crime)

13 14. Respondent's application is subject to denial under Code sections  
14 3750, subdivision (d), 3752, and 480, and California Code of Regulations, Title 16,  
15 sections 1399.370, subdivisions (c), in conjunction with section 3732, subdivision (b), in  
16 that respondent was convicted of crimes substantially related to the qualifications, functions  
17 and duties of a respiratory care practitioner. The circumstances are as follows:

18 October 2, 2003 Conviction

19 A. On July 11, 2003, Lompoc police officers responded to a report of  
20 two unconscious males in a parked vehicle. When the officers arrived, the vehicle  
21 was in the middle of an intersection with the engine running. One officer had to  
22 vigorously shake respondent in order to have him regain consciousness. The officer  
23 noticed that respondent appeared to be extremely intoxicated. When respondent  
24 was asked if he had been drinking, he stated he had about 4-5 beers. He also said  
25 he had taken prescription Vicodin a few hours earlier. Respondent failed to  
26 successfully complete the field sobriety tests.

27 B. On August 5, 2003, a felony complaint was filed against respondent  
28 in a criminal proceeding in Santa Barbara County Superior Court, Case No.

1 1124791. Respondent was charged with violating Vehicle Code section 23152(a),  
2 driving under the influence of alcohol with three prior convictions, a felony (count  
3 1); section 23152(b), driving with .08% or higher blood alcohol level with three  
4 prior convictions, a felony (count 2); and section 14601.2(a), driving with privilege  
5 suspended for prior DUI conviction, a misdemeanor (count 3).

6 C. On October 2, 2003, respondent was convicted upon his plea of nolo  
7 contendere to driving with .08% or higher blood alcohol level with three prior  
8 convictions (count 2). He was placed on probation for five years on a number of  
9 terms and conditions. The court ordered him to serve 180 days in county jail (with  
10 credit for 44 days); complete a six-month residential treatment program upon  
11 release from custody; complete an eighteen-month multiple offender DUI program;  
12 and pay fines and penalty assessments of \$250.00 or complete 40 hours of  
13 community service, plus pay a restitution fine of \$200.00 and a vehicle code fine of  
14 \$1,800.00. His driving privilege was suspended for four years. Counts 1 and 3 of  
15 the complaint were dismissed.

16 January 25, 1999 Conviction

17 D. On December 4, 1998, Lompoc police officers responded to a report  
18 of a traffic collision in a shopping center. Employees of Albertson's informed the  
19 officers that respondent's vehicle had hit a tree in the parking lot. When the officers  
20 located respondent, they noticed that he was swaying back and forth, there was a  
21 strong odor of alcohol on his breath and person, his eyes were bloodshot and  
22 watery, and his speech was slow, slurred and deliberate. When asked how much he  
23 had been drinking, respondent said, "I had a few." He failed to successfully  
24 complete the field sobriety tests. The results of his breath test indicated his blood  
25 alcohol level was .22%.

26 E. On December 18, 1998, a complaint was filed against respondent in  
27 a criminal proceeding in Santa Barbara County Municipal Court, Case No.  
28 L988608. Respondent was charged with violating Vehicle Code section 23152(a),

1 driving under the influence of alcohol (count 1) and section 23152(b), driving with  
2 .08% or higher blood alcohol level (count 2) with allegations of prior convictions;  
3 section 14601.2(a), driving with privilege suspended for a prior DUI conviction  
4 (count 3); section 23247(e), operating a vehicle without a functioning ignition  
5 interlock device (count 4); and section 16028(a), failure to provide evidence of  
6 financial responsibility (count 5), an infraction.

7 F. On January 25, 1999, respondent was convicted upon his plea of  
8 nolo contendere to driving under the influence of alcohol (count 1) and driving with  
9 privilege suspended for a prior DUI conviction (count 3). He was placed on  
10 probation for five years on a number of terms and conditions. The court ordered  
11 him to serve 180 days in county jail, attend a multi-offender alcohol program and  
12 pay a fine of \$1,500.00. His driving privilege was suspended for three years.  
13 Counts 2, 4, and 5 of the complaint were dismissed.

14 August 14, 1997 Conviction

15 G. On April 10, 1997, a complaint was filed against respondent in a  
16 criminal proceeding in Santa Barbara County Municipal Court, Case No.  
17 970304660. Respondent was charged with violating Vehicle Code section  
18 23152(a), driving under the influence of alcohol and refusing a chemical test (count  
19 1) and section 23152(b), driving with .08% or higher blood alcohol level (count 2).  
20 On or about May 30, 1997, an amended complaint was filed adding the allegation of  
21 a prior conviction on April 28, 1997, for violation of Vehicle Code section  
22 23152(a).

23 H. On August 14, 1997, respondent was convicted upon his plea of nolo  
24 contendere to driving with .08% or higher blood alcohol level with a prior DUI  
25 conviction (count 2). He was placed on probation for three years on a number of  
26 terms and conditions. The court ordered him to serve 60 days in county jail (with  
27 credit for 1 day), attend a multi-offender alcohol program, and pay a fine of  
28 \$1,429.00 plus a \$100.00 restitution fine. His driving privilege was suspended for

1 one year. Count 1 of the complaint was dismissed.

2 April 28, 1997 Conviction

3 I. On April 8, 1997, a complaint was filed against respondent in a  
4 criminal proceeding in Santa Barbara County Municipal Court, Case No. L976760.  
5 Respondent was charged with violating Vehicle Code section 23152(a), driving  
6 under the influence of alcohol and refusing a chemical test.

7 J. On April 28, 1997, respondent was convicted upon his plea of nolo  
8 contendere to driving under the influence of alcohol and refusing a chemical test.  
9 He was placed on probation for three years on a number of terms and conditions.  
10 The court ordered him to serve 48 hours in county jail, attend a first-offender  
11 alcohol program, and pay a fine of \$1,500.00.

12 K. The following crimes are substantially related to the qualifications,  
13 functions and duties of a respiratory care practitioner: (1) driving with .08% or  
14 higher blood alcohol level with three prior convictions; (2) driving under the  
15 influence (DUI) of alcohol; (3) driving with privilege suspended for a prior DUI  
16 conviction; and (4) driving with .08% or higher blood alcohol level with a prior  
17 conviction.

18 SECOND CAUSE FOR DENIAL OF APPLICATION

19 (Confinement for Intemperate Use of Alcohol)

20 15. Respondent's application is subject to denial under Code section  
21 3750.5, subdivisions (c) and (e) in conjunction with section 3732, subdivision (b), in that  
22 Respondent has been confined by a court of competent jurisdiction for intemperate use of  
23 alcohol. The circumstances are as follows:

24 A. The facts and circumstances alleged in paragraph 14 above are  
25 incorporated here as if fully set forth.

26 PRAYER

27 WHEREFORE, Complainant requests that a hearing be held on the matters  
28 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1                   1.       Denying the application of Leonard Dominguez for a Respiratory  
2 Care Practitioner License;

3                   2.       Directing Leonard Dominguez to pay the Respiratory Care Board the  
4 costs of the investigation and enforcement of this case, and if placed on probation, the costs  
5 of probation monitoring;

6                   3.       Taking such other and further action as deemed necessary and  
7 proper.

8 DATED: January 12, 2007

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10  
11                               Original signed by Liane Zimmerman by:  
12                               STEPHANIE NUNEZ  
13                               Executive Officer  
14                               Respiratory Care Board of California  
15                               Department of Consumer Affairs  
16                               State of California  
17                               Complainant  
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